



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: August 7, 2020

TO: Honorable Mayor Kevin L. Faulconer  
David Nisleit, Chief, San Diego Police Department  
Honorable City Attorney Mara Elliott, City of San Diego  
Honorable Council President Georgette Gomez  
Members of the City Council

FROM: Brandon Hilpert, Chair, Community Review Board on Police Practices  
via Sharmaine Moseley, Executive Director, Community Review Board  
on Police Practices *SM*

SUBJECT: Recommendation to Revise or Rescind Section 56.30 of the Municipal  
Code (Seditious Language) and Discontinue SDPD Citations

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This memo is to communicate that at its Open Meeting on May 28, 2019, the Community Review Board on Police Practices (CRB) voted unanimously (19-0-1) to submit a letter to the Mayor and City Attorney's Office requesting the City of San Diego to evaluate and consider updating (or rescind) Section 56.30 of the San Diego Municipal Code.

In the process of examining community generated complaints, the City's "seditious language" provision (Municipal Code Section 56.30)<sup>1</sup>. has been brought to the attention of the CRB. This code was adopted in 1918, most likely to reflect community standards at the time. In short, this code states the use of seditious language (typically profanity) is a misdemeanor offense.

Although this may be a legacy code, it is being actively enforced by San Diego Police Department (SDPD) officers. Since 2013, SDPD has issued 83 citations under this code. However, it should be noted that SDPD officers are issuing citations, typically as infractions, therefore bypassing the judicial system.

In a recent *Voice of San Diego* article, it was noted: "Hilary Nemchik, a spokeswoman for the San Diego City Attorney's office, which prosecutes misdemeanors, said her office hadn't been aware police were enforcing a section of the municipal code prohibiting seditious language. She called it 'antiquated' and said deputy city attorneys would not prosecute anyone for it."

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<sup>1</sup> <https://docs.sandiego.gov/municode/MuniCodeChapter05/Ch05Art06Division00.pdf>

Page 2

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Multiple court cases across the country strongly indicate that this ordinance is most likely illegal and unenforceable due to First Amendment rights. For example, *Cohen v California*<sup>2</sup> in 1971 and *Reno v. ACLU*<sup>3</sup> in 1997, where the U.S. Supreme Court decided that such aspects of seditious language are constitutionally protected speech.

In addition to our request to update (or rescind) Section 56.30 of the San Diego Municipal Code, we respectfully recommend that SDPD cease issuing citations under this section of the Municipal Code for individuals using profanity.

The CRB thanks you for your attention to this matter. If you have any questions please do not hesitate to contact me at 619-548-8002.

Sincerely yours,



Brandon Hilpert, Chair  
Community Review Board on Police Practices

cc: Kris Michell, Chief Operating Officer  
Aimee Faucett, Chief of Staff, Office of the Mayor  
Andrea Tevlin, Independent Budget Analyst  
Francis Barraza, Deputy Chief of Staff for Community Engagement, Office of the Mayor  
Jessica Lawrence, Director of Policy & Council Affairs, Office of the Mayor  
Al Guaderrama, Executive Assistant Chief, San Diego Police Department  
Mike Holden, Captain of Internal Affairs, San Diego Police Department  
Joel Day, Director, Office of Board and Commissions  
Members of the CRB

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<sup>2</sup> <https://supreme.justia.com/cases/federal/us/403/15/>

<sup>3</sup> <https://supreme.justia.com/cases/federal/us/521/844/>